

CMT Engineering Laboratories Appeal Hearing – April 18, 2014 (Draft) Meeting Minutes

Attendees:

Jonathan Rupp
Seth Tait
Scott Rigby
Bruce Parker
Don Kattelman
James Short
Alan Bachman
Chiarina Bautista
Ryan Lindstrom
Mark Anderson
Bryan Hemsley
Dale Robinson
Mark A. Huntsman
Charlie Trujillo

Appeal Hearing: Engineering Laboratories appeal regarding Cache County School District RFP for construction materials testing and special inspections.

Jonathan Rupp is representing CMT Engineering. RFP was issued on January 2014 for construction materials testing – gave Exhibit #1 to the court reporter.

Contentions by Mr. Rupp: Utah testing is not a responsive party, as responsive is defined in the Utah Code. Utah Testing Engineering was created in September of 2011. Utah Testing did not meet the requirements of the RFP and the contract should have been awarded to CMT Engineering. Sunrise did not submit a proposal. Utah Testing is not a responsive bidder. CMT should have been awarded the contract.

Seth Tait – counsel for Cache County School District.

Exhibit #1 – RFP
Exhibit #2 – Scoring Sheet
Exhibit #3 – Testing proposal
Exhibit #4 – Testing articles

There are two issues for the panel: (1) whether protest is properly before the panel, (2) whether the School District's decision was arbitrary and capricious. CMT's protest was never properly filed with the protest officer. The email received from Charlie Trujillo had no term "protest" or citation from the Utah Procurement Code. The District does not believe the protest is valid and asked the panel to dismiss the appeal. Even if the appeal was properly filed, the District does not believe the decision was arbitrary and capricious. The decision made by the District was reasonable and not arbitrary and capricious. There was no error made here.

Rebuttal by Jonathan Rupp for CMT Engineering

Utah Testing did not exist 5 years ago. Sunrise is not Utah Testing. It is a subsidiary company. The party that is on the hook is Utah Testing Engineering. There is no guarantee that their employees have much experience.

Mark Anderson said they are 3 1/2 years old.

John Rupp said they did not put that in the RFP.

The email sent from Charlie Trujillo was the protest. It is more than just a follow up email. Scott Rigby acknowledged the protest. John Rupp believes the email meet the requirements for a protest.

Closing arguments by Seth Tait – There are two issues before the panel: (1) was the protest timely and properly brought – the School District does not believe it was, (2) the email did not amount to a protest. The decision was not arbitrary and capricious.

Closing arguments Jonathan Rupp – CMT Engineering – The email exchange indicated CMT protesting the award and was received by the District as such. It was proper and the requirements were met. It identifies the problems and actions were taken. Utah Testing has not had the experience and they are not a responsive party. CMT is a responsive party and the decision should be reversed and awarded to CMT.

Hearing is being continued on April 24th from 9:30 until 11:00.